

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments add and revise language to clarify the Department’s rules regarding reviews and audits in the medical assistance program. The amendments make the rules consistent with the “good cause” language in the Iowa Rules of Civil Procedure by using “good cause” language for exceptions.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0569C** on January 23, 2013.

The Department received two comments from interested parties.

Both respondents shared similar concerns that the proposed amendments would strip providers of their right to fairly and effectively defend themselves in an appeal. In addition, the respondents believed that the amendments would disallow home- and community-based service (HCBS) providers the opportunity to defend themselves when information from the auditors has not been conveyed completely or when it does not provide all the details necessary to validate the overpayment, thus requiring an interaction with the Audit Unit to determine that all records and information have been provided.

The Department reviewed the comments and responds that the intent of the portion of the amendments to which the comments referred was only to address those providers that refuse to submit requested records as required under subrule 79.4(3). The intent of the rule change is not to subvert a provider’s rights to due process. The Iowa Medicaid Enterprise (IME) has experienced instances where providers are unresponsive to requests for records. The provider will file an appeal and months later appear at the appeal hearing with the records that should have been submitted when requested. In one case, the administrative law judge required the IME to review the records provided at the hearing, which then diminishes the requirement for providers to provide the records when requested as defined under subrule 79.4(3), results in wasted resources, and invites fraud by means of intentional delay of the process to afford the provider more time to manufacture the records.

One change from the Notice has been made. In collaboration with one of the respondents, the Department revised the underscored language in subrule 79.4(7) in Item 3 to clarify the intent and to ensure that there are no due process violations for providers.

The Council on Human Services adopted these amendments on April 10, 2013.

These amendments do not provide for waivers in specified situations because all Medicaid providers are subject to the same requirements. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments will become effective July 1, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **79.4(3)“b”** as follows:

b. Extension of time limit for submission.

(1) The department may grant an extension to the required submission date of up to 15 calendar days upon written request from the provider or the provider’s designee. The request must:

1. Establish good cause for the delay in submitting the records; and
2. Be received by the department before the date the records are due to be submitted.

~~(2) Under exceptional circumstances, a provider may request one additional 15-calendar-day extension. The provider or the provider’s designee shall submit a written request that:~~

- ~~1. Establishes exceptional circumstances for the delay in submitting records; and~~
- ~~2. Is received by the department before the expiration of the initial 15-day extension period.~~

(2) For purposes of these rules, “good cause” has the same meaning as in Iowa Rule of Civil Procedure 1.977.

(3) The department may grant a request for an extension of the time limit for submitting records at its discretion. The department shall issue a written notice of its decision.

(4) The provider may appeal the department’s denial of a request to extend the time limit for submission of requested records according to the procedures in 441—Chapter 7.

ITEM 2. Adopt the following new paragraph **79.4(3)“f”**:

f. Self-audit. The department may require a provider to conduct a self-audit and report the results of the self-audit to the department.

ITEM 3. Amend subrule 79.4(7) as follows:

79.4(7) *Appeal by provider of care.* A provider may appeal the finding and order of repayment and withholding of payments pursuant to 441—Chapter 7. However, an appeal shall not stay the withholding of payments or other action to collect the overpayment. Records not provided to the department during the review process set forth in subrule 79.4(3) or 79.4(5) shall not be admissible in any subsequent contested case proceeding arising out of a finding and order for repayment of any overpayment identified under subrule 79.4(6). This provision does not preclude providers that have provided records to the department during the review process set forth in subrule 79.4(3) or 79.4(5) from presenting clarifying information or supplemental documentation in the appeals process in order to defend against any overpayment identified under subrule 79.4(6). This provision is intended to minimize potential duplication of effort and delay in the audit or review process, minimize unnecessary appeals, and otherwise forestall fraud, waste, and abuse in the Iowa Medicaid program.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/13.